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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/664,109 | 09/17/2003 | Jay C. Engstrom | 33154.9 | 4766 |

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MINNEAPOLIS, MN 55402

EXAMINER

LEV, BRUCE ALLEN

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3634

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|----------------------------------|--|
| Office Action Summary | Application No. 10/664,109 | Applicant(s) ENGSTROM, JAY C. | |
| | Examiner Bruce A. Lev | Art Unit 3634 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>Sep 17, 2003</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
|---|---|

BRUCE A. LEV
PRIMARY EXAMINER

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 32-54 are rejected under the judicially created doctrine of double patenting over **claims 1-18** of U. S. Patent No. **6,622,823** since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: A tree climbing apparatus comprising platforms; flexible straps; spring clips; rubber coverings; padded seats; backpack straps; etc.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 112

Claims 33, 44, and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. For example, the preamble clearly indicates that the subcombination of a "tree climbing apparatus" is being claimed. However, the body of the claim positively recites a "user", e.g., "wherein the user..." and "upon which the user sits", which indicates the claims as being drawn to a combination of the "tree climbing apparatus" and the "user". Therefore, the applicant is required to clarify what the claims are intended to be drawn to, i.e., either the "tree climbing apparatus" alone or in combination with the "user", and to present the claims with the language which is consistent with the invention. The applicant should note that "*adapted to be*" language may be appropriate if claiming the "tree climbing apparatus" alone (i.e., "adapted to be secured to").

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 46-50 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by ***Walker, Jr. 5,097,925***.

As concerns claim 46, Walker, Jr. sets forth a tree climbing apparatus comprising a first platform having a first flexible strap 1 having a non-scratching surface; and a second platform having a second flexible strap 23 having a non-scratching surface; the platforms comprising support arms (8 and 19 respectively); and a plurality of apertures (2 and 22 respectively).

As concerns claim 47, Walker, Jr. sets forth the apparatus wherein a user can face the tree.

As concerns claim 48, Walker, Jr. sets forth the straps being adjustable.

As concerns claim 49, Walker, Jr. sets forth the straps being formed of resilient material (viewed as inherent since the straps are adjustable and adapt to different sized trees).

As concerns claims 50, Walker, Jr. sets forth a pair of boot straps (inclusive of member 30).

As concerns claims 53, Walker, Jr. sets forth an adjustable cam strap 23.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32-35, 37-39, and 41-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Walker, Jr. 5,097,925 in view of Mancini, Jr. 5,842,540**.

Walker, Jr. sets forth the tree climbing device, as advanced above, except for the spring clips at the ends of the straps engaging respective apertures. However, **Mancini, Jr. teaches** the use of spring clips 77 at the ends of the straps engaging respective apertures. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Walker, Jr. by incorporating spring clips at the ends of the straps engaging respective apertures, as taught by Mancini, Jr., in order to provide quicker, easier, and more reliable connecting means between the ends of the straps and their respective apertures.

Claims 40, 51, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Walker, Jr. in view of in view of Mancini, Jr. further in view of Woller 5,971,104**.

Walker, Jr. in view of Mancini, Jr. set forth the tree climbing device, as advanced above, except for the padded seat, back rest, and shelf. However, **Woller teaches** the use padded tree stand members (inclusive of member 60). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the seat, back rest, and shelf of Walker, Jr. in view of Mancini, Jr. by

incorporating padded members, as taught by Woller, in order to provide further comfort to a user.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over ***Walker, Jr. in view of in view of Mancini, Jr. further in view of Tentler 4,427,092.***

Walker, Jr. in view of Mancini, Jr. set forth the tree climbing device, as advanced above, except for the resilient material being rubber. However, ***Tentler teaches*** the use of tree stand straps having a rubber coating. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tree climbing device of Walker, Jr. in view of Mancini, Jr. by incorporating straps having a rubber coating, as taught by Williams, in order to increase the friction between the straps and the tree and thereby improve safety of the apparatus.

Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over ***Walker, Jr. in view of in view of Mancini, Jr. further in view of Williams 4,802,552.***

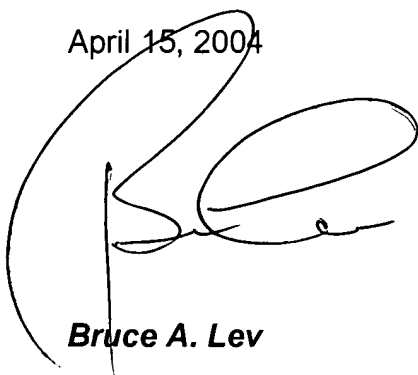
Walker, Jr. in view of Mancini, Jr. set forth the tree climbing device, as advanced above, except for the backpack straps. However, ***Williams teaches*** the use of backpack straps 31 upon a tree stand member. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tree climbing device of Walker, Jr. in view of Mancini, Jr. by incorporating backpack straps, as taught by Williams, in order to provide means for a user to conveniently carrying the device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

April 15, 2004

A handwritten signature in black ink, appearing to be 'B. Lev', with a large, stylized loop at the beginning.

Bruce A. Lev

Primary Examiner

Group 3600